



MAYOR
ROSEMARY S. TIERNEY

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Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

City of New Bedford

OFFICE OF THE MAYOR

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 25, 1993

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FCC MAIL ROOM

RE: Regulation of Cable Television Rates

Dear Ms. Searcy:

Please find enclosed one original and four (4) copies of the Comments of the Mayor of the City of New Bedford, Massachusetts regarding the Notice of Proposed Rulemaking, MM Docket No. 92-266.

Sincerely,

Rosemary S. Tierney
ROSEMARY S. TIERNEY
MAYOR

RST:rjl

Enclosures (5)

cc: Cable Advisory Committee
Charles T. Rainville, Cable Agent
Peter J. Epstein, Esquire

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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FCC MAIL ROOM

In The Matter Of)
)
CABLE TELEVISION)
RATE REGULATION)

JAN 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 92-266

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JAN 27 1993

COMMENTS OF THE MAYOR
OF THE CITY OF NEW BEDFORD

The Mayor of the City of New Bedford, Massachusetts (the "City"), hereby submits these comments to the Federal Communications Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. The Mayor, as statutory Issuing Authority under Massachusetts General Laws Chapter 166A, has the authority and responsibility for establishing, overseeing and regulating the installation and operation of any cable communications system(s) within the City's corporate limits.

The Mayor issued a ten-year cable television renewal license to Whaling City Cable TV, Inc. ("Whaling City") on September 24, 1992. The cable system serves approximately 29,000 subscribers throughout the City.

The Mayor applauds Congress for having passed the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") last October. In its NPRM, the Federal Communications Commission (the "FCC") has clearly taken much time, effort and thought in suggesting various ways to implement the 1992 Cable Act. Nothing is more important in the 1992 Cable Act to subscribers in the City of New Bedford than the various rate regulatory-related provisions.

The City is home to many lower and fixed income and elderly residents who have come to depend upon the cable system for clear reception and access to programming of interest to minorities and other diverse groups. Unfortunately, many of these residents are having an increasingly difficult time paying for cable service, particularly given the frequent rate increases imposed by Whaling City. In fact, in 1992 alone, Whaling City imposed two (2) separate rate increases on its New Bedford subscribers: the first took effect in January of 1992, with the second taking effect on December 1, 1992. In its December 1992 rate increase, Whaling City also began to include line-items on its subscriber bills. While the City understands Whaling City's legal right to include such line-items, the Mayor disagreed with Whaling City on a number of line-item related issues.

Finally, during the recent negotiations leading up to the renewal of Whaling City's license to operate in the City, City representatives voiced concern to Whaling City about the rates charged subscribers for subscriber equipment, including the monthly charge for remote-control devices ("remotes"). Therefore, the Mayor believes that it is important for the City to file comments in this NRPM regarding i) Basic Service and higher "tier" rate regulation, ii) regulation of rates for the installation and use of subscriber equipment, iii) other miscellaneous rate-regulatory provisions and iv) subscriber bill line itemization.

I) RATE REGULATION {Section 623, as amended}

A) Introduction

As in most cable systems in this country, Whaling City holds a *de facto* monopoly for the provision of cable television services in the City. Many residents question why another cable television system cannot be brought into the City to provide competition to Whaling City and, as a result, provide better, more responsive cable service at more affordable rates.

Despite the fact that the previous and current cable licenses are non-exclusive, Whaling City nonetheless holds the only cable television license in the City. Given the reality of cable franchising in this country, Congress was striving to bring about fairness and common sense in enacting the rate regulatory provisions in the 1992 Cable Act. The Mayor supports a number of specific rate regulatory provisions discussed in the NRPM as explained below.

B} Effective Competition

The Mayor believes that the FCC should focus its efforts on the Effective Competition standard on the definition of "multichannel video programming distributor." The Mayor believes that such a distributor should be unaffiliated with, and completely independent of, the incumbent cable operator. The Mayor believes: i) that each multichannel video programming distributor should actually make its service available to at least fifty percent (50%) of the households in the community; ii) that "comparable programming" should correspond to video programming similar to that produced by broadcast television stations {ie-the definition of "video programming" in the Cable Communications Policy Act of 1984 (the "1984 Cable Act")}; iii) that competing multichannel video programming distributors should have to *provide* and actually *program* a minimum number of channels of video programming; and iv) that persons utilizing leased access capacity and/or public, educational and governmental ("PEG") access channels on the existing cable should **not** be deemed to be multichannel video programming distributors.

Competition is truly about choice. The fact is that New Bedford cable consumers, like those throughout this country, want a choice in what company they choose to provide cable television service. To these millions and millions of cable subscribers, that choice is only available if there is another multichannel video programming distributor in the community *competing directly* against the incumbent cable television operator.

C} Basic Service

The Mayor believes that the rate regulatory provisions of the 1992 Cable Act are crucial to the thousands of cable subscribers in the City who increasingly have difficulty affording cable service. For example, the cost of Basic Service only in New Bedford just increased last month (December, 1992) to \$15.45 per month. Ensuring a Basic Service that is affordable and available to as many residents as possible is an important goal of the Mayor.

To this end, the Mayor supports the FCC's proposed rate regulation procedures. Specifically, the Mayor believes that the certification process for municipalities should be as simple as possible: a standard form developed by the FCC is the most efficient process to follow for *both* the municipality *and* the FCC. The Mayor also believes that the FCC has the authority to grant certification to municipalities to regulate Basic Service in states that may prohibit rate regulation. This is a crucial issue for the FCC to confront directly. Because the 1992 Cable Act permits rate regulation by municipalities, states should not be able to thwart this federal directive in any manner. The FCC should specify that its certification granted to a municipality effectively allows that municipality to regulate rates pursuant to Section 623 of the 1992 Cable Act, notwithstanding any state laws or regulations to the contrary. *The rate regulatory provisions of the 1992 Cable Act, and the FCC's corresponding regulations, must preempt any and all inconsistent state and local laws.*

D} Regulation Of Other Programming Services

Congress understood the importance of providing a mechanism for franchising authorities, subscribers and other governmental entities to file complaints with the FCC concerning rates for other programming services that are considered to be "unreasonable."

While assuring that a Basic Service is available to as many residents as possible for the lowest cost, the Mayor is also concerned that rates for higher tiers of services be reasonably priced. Clearly, many residents of New Bedford and other communities are interested in subscribing to these expanded tiers to receive some of the satellite services such as CNN, ESPN, C-SPAN, etc. While rates for such expanded tiers will clearly be higher than the costs for Basic Service, the FCC should ensure that cable operators do not simply raise those costs to somehow recoup for what they may perceive as Basic Service "loses." The cost of the Basic Plus Service in New Bedford was increased last month to \$20.20 per month.

The Mayor believes that, procedurally, a complaint should be served upon the FCC, the Franchising Authority and the operator, with the operator having an opportunity to respond to the complainant. At that point, the FCC would determine whether it needed to examine the complaint further. If so, the burden would then be placed upon the operator to prove that the complaint was without merit and should be dismissed by the FCC.

E) Regulation of Rates for Equipment, Etc.

The Mayor believes that this is one of the crucial sections of the rate regulatory provisions in the 1992 Cable Act. Cable television subscribers have been forced to rent certain equipment from the operator for many years at rates which have little, if any, relevance to their actual cost. One example of this is the requirement that subscribers rent remote control devices ("remotes") from the operator on a monthly basis.

The Mayor believes that rates for remotes and converters used by subscribers to receive cable service, including installation or equipment used for expanded tiers of service, should be based on the actual costs for supplying such equipment and/or installation. The Mayor is concerned that if the FCC "breaks-out" these equipment rates separately into those for

Basic Service and those for expanded tiers, thousands of subscribers of those higher tiers will be forced to pay rates that do not correspond to actual costs. Just as millions of owners of stereo, television and other equipment benefit today as the costs of their electronic equipment decreases, so too should cable television subscribers benefit from increasingly lower cost converters, remotes, etc.

F} Customer Changes

Many subscribers undoubtedly either downgrade or upgrade their cable service at different times. The FCC should ensure that this process is indeed based on the actual cost of such downgrades or upgrades to the operator. The process should apply to *any* changes in service requested by the subscriber even after installation of cable service. The charges for any such downgrades or upgrades should be nominal, based on the actual cost, because many systems now use computers to make those changes. Several other points are relevant here as well. First, any regulations regarding changes in service promulgated by the FCC should *preempt* existing state laws or regulations on the matter. Second, if subscribers downgrade a particular service as a result of a rate increase, there should be **no** charge at all to the subscriber for a finite period of time from the date of the rate increase, such as thirty (30) days.

G} Tier Buy-Through Prohibitions

While the FCC has issued a separate NPRM regarding tier buy-through prohibitions {MM Docket No. 92-262}, the Mayor notes that these prohibitions are contained in Section 623 of the 1992 Cable Act, many provisions of which are the subject of the instant NPRM.

The Mayor strongly supports the FCC's attempts to prohibit discrimination between subscribers to different tiers of cable service. It is particularly important that cable operators do not charge *different* rates for premium and/or pay-per-view services for subscribers to expanded tiers of service beyond the Basic Service and those subscribers who only take the Basic Service. The City's concern is that subscribers are not forced to pay for programming that they do not wish to view simply in order to get specific programming that they do wish to view.

H} Miscellaneous Rate Provisions

Finally, the Mayor has comments concerning the following rate regulation-related provisions.

First, regarding discounts for senior citizens and other "economically disadvantaged groups," the Mayor believes that the FCC should ensure that i) any such discounts promised to the community can be legally enforced by the franchising authority, ii) the operator does not make it burdensome for the elderly and other groups to verify their eligibility to receive such discounts; and iii) an explicit definition of "economically disadvantaged groups" be developed by the FCC in a fair and open manner.

Second, the FCC should require that operators provide adequate financial information, *based on the system's operation in that municipality only*, to allow the municipality to administer and enforce the FCC's rate regulations in a fair and effective manner. Any such requirements should *preempt* state laws or regulations that would restrict the availability of such financial information to the municipality.

Third, the FCC should promulgate regulations requiring the operator to have a uniform rate structure throughout a regional system based upon the provision of standard

cable services throughout the region. Clearly, any special costs that are specific to any one community can be reflected as a separate line item. However, it is important for municipalities and subscribers to understand that the provision of cable services is subject to regulation and that rates for the same services will not vary from community to community.

II) SUBSCRIBER BILL ITEMIZATION {Section 622, as amended}

This is an important issue, which requires a detailed response. While the 1992 Cable Act does allow cable operators to itemize franchise fees and any amounts required by the cable license or franchise to support PEG access channels, many operators, unfortunately, use the threat of such line items in an attempt to lessen contractual obligations. While the FCC cannot undo what Congress has done in Section 622(c), it can ensure that line-items, when used, are accurate and fair.

To this end, first and foremost, the FCC should promulgate regulations instructing operators exactly *how* to compute each line-item. While it may appear to be a simple matter, the reality is that many operators now compute line-items using their own formulas and cost calculations. The result is that very often neither subscribers nor the franchising authority can understand, let alone verify the accuracy of, those line-items. For example, over what period of time can an operator depreciate assets for purposes of line-items? Can operators compute line-item amounts for items that were provided years before and have already been fully depreciated? How can a municipality verify that specific amounts are not being inappropriately line-itemed? To this end, the FCC should promulgate a set of simple and clear instructions explaining exactly how an operator can compute each line-item. A franchising authority should be authorized to challenge the accuracy of any such line-item

amount to the FCC, which should have the authority to order the operator to list the accurate amount.

In addition, the FCC should ensure that the line-items are accurately captioned or described. For example, under a PEG access line-item, there should only be PEG access-related costs, not, for example, costs related to Institutional Networks, drops to public buildings, etc. If the operator chooses to list such other costs, if allowable pursuant to Section 622(c), *separate* line-items for each should be listed.

The FCC should also define and clarify the language in Section 622(c)(3) regarding "The amount of any such fee, tax, assessment, or charge of any kind imposed by any other governmental authority on the transaction between the operator and the subscriber." What exactly does this mean? What exactly can an operator place as a line-item? For example, if a state requires free drops to public buildings, can an operator subsequently line-item such costs despite the requirement that the drops be free? Can copyright fees paid to the Copyright Royalty Tribunal be placed on subscriber bills as separate line-items?

Finally, while Section 622(c) discusses line-item amounts attributable to some governmental action, it does not appear to be inappropriate that the operator place line-items on its bills that more accurately detail *its* costs and expenses to subscribers. The object should be to more accurately inform the cable subscriber of *all* the component costs and expenses that comprise their bill for cable service. This sort of disclosure necessitates costs and expenses attributable to both the operator and the franchising authority being separately listed as a line-item.

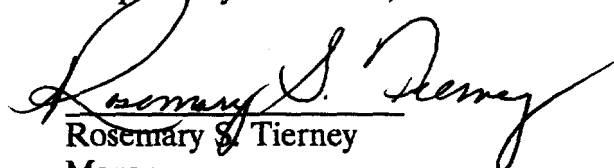
CONCLUSION

By submitting these comments, the Mayor hopes to provide the FCC with accurate information, albeit necessarily limited in scope, regarding rate regulatory-related issues on the local level. These comments are provided in a spirit of fairness and balance, in order to provide cable subscribers with fair and accurate bills and to allow franchising authorities to exercise rate regulation to protect subscribers and ensure that a Basic Service is available to subscribers at an affordable rate. As discussed herein, The Mayor also believes that only a second cable television system or another multichannel video programming distributor in the community can realistically offer competition to an incumbent cable television system.

Cable regulation has evolved over the past years and will likely continue to do so. Hopefully, in the future, because of i) current efforts to increase competition to cable operators and ii) rapidly developing new technologies, subscribers, municipalities and their operators will have reached a point where regulation, if necessary at all, will be limited.

In the meantime, the Mayor believes that the FCC has made a comprehensive and effective start in its efforts to implement the rate-regulatory provisions of the 1992 Cable Act. These efforts should continue until the millions of cable television subscribers throughout this nation are guaranteed the right to receive cable service at affordable rates.

Respectfully Submitted,


Rosemary S. Tierney
Mayor
City of New Bedford, MA

Dated: January 25, 1993